

A nonprofit corporation organized for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreation facilities for the children and other residents of a community is exempt from Federal income tax under section 501(a) of the Internal Revenue Code of 1954 as a charitable organization described in section 501(c) (3) thereof.

Acquiescence in the holding in *Isabel Peters v. Commissioner*, 21 T.C. 55, which action replaces a previous nonacquiescence, C.B. 1955-1, 8, does not constitute agreement with all the reasons given for such holding.

Advice has been requested whether a nonprofit corporation organized for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreation facilities for the children and other residents of a particular community may be exempt from Federal income tax under Section 501(a) of the Internal Revenue Code of 1954 as a charitable organization described in section 501(c) (3) thereof. Advice also has been requested as to the effect of the decision of the Tax Court of the United States in *Isabel Peters v. Commissioner*, 21 T.C. 55, nonacquiescence, C.B. 1955-1, 8, on the position of the Service with respect to the classification of nonprofit social welfare organizations for exemption under section 501(a) of the Code.

The bylaws of the instant organization provide that the swimming pool and other recreation facilities shall be operated as a public undertaking for the benefit of the residents of the community. Residents taking for the benefit of the residents of the community making use of such facilities consist principally of low-income groups who are unable to pay the cost of privately sponsored recreation facilities for themselves and their children. The funds of the association are raised by public subscription with the exception of small amounts derived from nominal charges made for admission to the swimming pool. Funds are used to pay for the cost of construction of facilities and for operating expenses. No part of the net income of the association inures to the benefit of any private individual. In the event of dissolution, the assets of the organization will be turned over to one or more recognized charitable organizations.

Section 501(c) (3) of the 1954 Code, which corresponds to section 101(6) of the 1939 Code, provides for the exemption of "Corporations, * * * or foundations, organized and operated exclusively for * * * charitable * * * purposes * * * no part of the net earnings of which inures to the benefit of any private shareholder or individual * * *."

In the instant case, the organization was formed to establish, maintain and operate a public swimming pool, playground and other recreation facilities for the children and

other residents of the community. Its funds are principally raised by public subscription. It appears that the income derived from charges for admission to the swimming pool is minor in amount and that such charges are purely incidental to the orderly operation of the pool. No part of the net income inures to the benefit of any private individual. Its assets upon dissolution will be turned over to recognized charitable organizations. Accordingly, since the property and its uses are dedicated to members of the general public of the community and are charitable in that they serve a generally recognized public purpose which tends to lessen the burdens of government, it is concluded that the instant organization is exclusively charitable within the meaning of section 501(c)(3) of the Code and is entitled to exemption from Federal income tax under section 501(a) of the Code.

In the case of *Isabel Peters v. Commissioner*, supra, the Tax Court of the United States held that the Eagle Dock Foundation, Inc., a nonprofit organization formed specifically to operate a public beach, playground and bathing facilities and generally to promote the general welfare of the community, should be classified as charitable within the meaning of section 101(6) of the Internal Revenue Code of 1939 rather than as a social welfare organization under section 101(8) which, like section 501(c)(4) of the 1954 Code provides exemption for "organizations not organized for profit but operated exclusively for the promotion of social welfare." Although the Service does not agree with the implication in that decision that every nonprofit organization dedicated solely "to the promotion of social welfare" should be classified as charitable, the Service believes that the foundation referred to therein was shown by the record to be exempt as a charitable organization within the meaning of section 101(6) of the 1939 Code, and that contributions to such foundation are deductible under section 23(o) and 23(q) of the 1939 Code.

The controlling stated purpose of the foundation, and the only purpose stated with any degree of particularity, is to "establish, equip, maintain and operate a public beach, playground and bathing facilities for the children and other residents of Cold Spring Harbor School District Number 8." Residents of this district are permitted to use the beach free of charge, the funds necessary for the operation of the beach being obtained by contributions. In the event the foundation is dissolved, its property is to be distributed to a trustee to be held for public benefit.

The foundation's certificate of incorporation also stated a purpose "to create and promote better understanding and sympathy between the people of the community and to further the general welfare and health of all of the people in the said school district." This statement however does not specify even in a general way that action is contemplated by it. It appears to be too general and vague to give validity to any activity except

perhaps that which is incidental to the operation of the beach.

According to the generally accepted definition, "charity" in the legal sense of the term includes benefits which are for an indefinite number of persons and are for the relief of the poor, the advancement of religion, the advancement of education, or "erecting or maintaining public buildings or works or otherwise lessening the burdens of government." Jackson v. Phillips, 14 Allen (Mass.) 539, 556. In view of this and in the light of what is said above, it is believed that the foundation is dedicated to a charitable purpose, namely, to "establish, equip, maintain and operate a public beach, playground and bathing facilities;" that its assets are impressed with a trust for such purpose; and that the trust may be enforced by the state or any interested person.

There is no indication that the foundation engages in any substantial activity not incidental to operating the beach.

For these reasons, the Internal Revenue Service acquiesces in the holding in the case of Isabel Peters v. Commissioner, supra, but not in all the reasons given for such holding, and, accordingly, has substituted an action of acquiescence, page 6, this Bulletin, for the outstanding action of nonacquiescence in that case.

An organization may not consider itself exempt merely because it falls within the scope of this Revenue Ruling. In order to establish its exemption under section 501(c)(3), it is necessary to file an application on Form 1023, Exemption Application, with the District Director of Internal Revenue for the internal revenue district in which is located the principal place of business or principal office of the organization. See section 1.501(a)-1 of the Income Tax Regulations.